UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/149,367	01/07/2014	Kimberly HICKS	40205/05201(MTV-052)	5515

30636	7590	05/02/2017

FAY KAPLUN & MARCIN, LLP
150 BROADWAY, SUITE 702
NEW YORK, NY 10038

EXAMINER
CONTINO SAUMBY, KRISTA

ART UNIT	PAPER NUMBER
2425	

MAIL DATE	DELIVERY MODE
05/02/2017	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte KIMBERLY HICKS and DIANA GERMAN

_____

Appeal 2017-000449
Application 14/149,367
Technology Center 2400

_____

Before ROBERT E. NAPPI, ERIC S. FRAHM, and
JASON M. REPKO, *Administrative Patent Judges*.

REPKO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20. App. Br. 1.[1] We have jurisdiction under 35 U.S.C. § 6(b).

We reverse, and pursuant to 37 C.F.R. § 41.50(b), we enter a new ground of rejection for claims 1, 9, and 16.

_____

[1] Throughout this opinion, we refer to (1) the Final Rejection ("Final Act.") mailed November 4, 2015, (2) the Advisory Action ("Adv. Act.") mailed February 10, 2016, (3) the Appeal Brief ("App. Br.") filed April 18, 2016, (4) the Examiner's Answer ("Ans.") mailed August 25, 2016, and (5) the Reply Brief ("Reply Br.") filed October 6, 2016.

THE INVENTION

Appellants' invention authenticates a user so that the user can access multimedia content. *See* Spec. ¶ 3. Claim 1 is reproduced below with our emphasis:

> 1. A method, comprising:
>
> receiving a user request for a multimedia content service from a user device over a first application;
>
> receiving an identifier of the user device;
>
> *identifying a service provider of a user;*
>
> generating an activation code associating the identifier with the service provider;
>
> transmitting the activation code to the first application on the user device;
>
> receiving the activation code from the user over a second application;
>
> activating the multimedia content service for the user device based on the received activation code; and
>
> providing content from the multimedia content service to the user device over the first application.

THE REJECTIONS

The Examiner relies on the following as evidence:

| Martinek et al. | US 2003/0130032 A1 | July 10, 2003 |
| Colvin | US 2004/0117663 A1 | June 17, 2004 |

Crunchyroll – Help – Roku (Sept. 28, 2011), https://web.archive.org/web/20110928093639/http://www.crunchyroll.com/help?topic=roku ("Crunchyroll").

Crunchyroll – Help – Premium Membership (Oct. 20, 2011) https://web.archive.org/web/20111020102850/http://www.crunchyroll.com/help?topic=anime_member ("Crunchyroll Premium").

Claims 1–3, 5, 6, 9–11, 13, 14, 16–18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Crunchyroll and Martinek. Ans. 3–11.

Claims 4, 7, 12, 15, and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Crunchyroll, Martinek, and Colvin. Ans. 11–15.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Crunchyroll, Mantinek, and Crunchyroll Premium. Ans. 15–16.

THE REJECTION OVER CRUNCHYROLL AND MARTINEK

Contentions

The Examiner finds that Crunchyroll teaches every element of claim 1, except for (1) receiving an identifier of the user device, (2) generating the recited activation code, (3) activating the multimedia content service, and (4) providing content, as recited. Ans. 3–5. In concluding that claim 1 would have been obvious, the Examiner relies on Martinek to teach these features. *Id.* at 4–5.

In this combination, the Examiner finds that Crunchyroll identifies a service provider of a user, as recited in claim 1. *Id.* at 4. For this limitation, the Examiner cites Crunchyroll's step of "Select the 'Link Your Account' button." *Id.* According to the Examiner, Roku is a service provider (Adv. Act. 2; Ans. 21) and Crunchyroll is a content source (Ans. 21). The Examiner finds that Crunchyroll determines that a service request is from a Roku device. *Id.* at 4. The Examiner further finds that Crunchyroll links the user's Roku device to the user's Crunchyroll account. *Id.* at 22. According

to the Examiner, Crunchyroll requires that a Roku device send an identification to link the account. Adv. Act. 2; Ans. 22.

Appellants argue that the Examiner has not shown that Crunchyroll teaches or suggests identifying a service provider of a user. App. Br. 6. According to Appellants, Crunchyroll does not teach the mechanism that links the account and is invoked by the cited button ("Select the 'Link Your Account' Button"). *Id.* In particular, Appellants argue that Crunchyroll does not teach or suggest (1) whether the account is associated with a service provider or (2) whether the cited button relates to a user's service provider. *Id.* Given Crunchyroll's disclosure, Appellants argue that the Examiner has not shown how Crunchyroll performs any identification. *Id.*

Analysis

Claim 1 recites, in part, "identifying a service provider of a user." We are persuaded by Appellants' arguments that the Examiner has not shown that Crunchyroll or Martinek teach or suggest this limitation. *Id.*

In particular, Crunchyroll's specific teachings are limited to seven frequently asked questions (FAQs). Crunchyroll 1–2. Of these FAQs, the Examiner finds that the second item corresponds to the limitation at issue. Ans. 4. This item provides instructions for linking an account to Crunchyroll's service. *Id.* Each instruction is directed to the user—e.g., visit a page or select a button. *See id.* None of these actions expressly instruct the user to identify a service provider. *See id.* Within the second item, the Examiner-cited step merely instructs the user to select a button. *Id.*

To be sure, it is proper to take into account not only Crunchyroll's specific teachings but also the inferences one skilled in the art would reasonably be expected to draw. But the Examiner's rationale here is insufficient given the cited teachings. *See* Ans. 4, 22; Adv. Act. 2. Specifically, the second item teaches or suggests, at most, that selecting the button causes a code to be displayed on a page. *Id.* Yet the Examiner concludes that (1) Crunchyroll requires a Roku device to send an identification and (2) Crunchyroll determines that the device should be linked. Adv. Act. 2; Ans. 22. Crunchyroll, however, does not mention a Roku device's identification or any related determination. Reply Br. 4. Nor has the Examiner presented or identified any teachings that would lead one of ordinary skill to infer that the button's selection causes or requires an identification. *See* Ans. 4, 22; Adv. Act. 2.

For example, the remaining items in Crunchyroll's FAQ do not support the Examiner's finding. *See* Crunchyroll 1–2. Instead, these items merely describe Crunchyroll's service and features. *Id.* In particular, item 1 explains that "Premium Membership" provides access to videos. *Id.* at 1. Although partially obscured, item 3, as best understood, describes how the user can access restricted content via "Video Preferences." *Id.* at 2. Items 4 and 5 discuss a show and certain episodes. *Id.* Item 6 describes that the app does not have all of the features on the website. *Id.* Item 7 describes how to ask additional questions about the service. *Id.* Apart from this description, Crunchyroll does not discuss service providers. App. Br. 6.

The Examiner did not cite Martinek for the limitation at issue. *See* Ans. 3–5. So, this reference does not cure Crunchyroll's deficiencies, as discussed above.

Therefore, we are constrained by this record to find that the Examiner erred in rejecting independent claim 1.

Independent claims 9 and 16 include similar limitations and are rejected for the same reasons as claim 1. *See id.* at 6, 9. So, we reverse claims 9 and 16 for similar reasons.

For the same reasons, we also do not sustain the Examiner's rejection of claims 2, 3, 5, 6, 10, 11, 13, 14, 17, 18, and 20, which depend from claims 1, 9, or 16.

THE REMAINING OBVIOUSNESS REJECTIONS

The Examiner's rejections of dependent claims 4, 7, 8, 12, 15, and 19 rely upon the combination of Crunchyroll and Martinek to teach the limitations of the independent claims. *See* Ans. 11–16. But the Examiner has not shown that the additional references remedy the deficiency in the rejection of the independent claims. *See id.* Therefore, we do not sustain the Examiner's rejections of these claims for the reasons discussed in connection with claim 1.

NEW GROUND OF REJECTION

Pursuant to our discretionary authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection for claims 1, 9, and 16 under 35 U.S.C. § 102(a)(1) and 35 U.S.C. § (a)(2) as anticipated by Naggar (US 2013/0332838 A1).

Naggar discloses a cross-platform application that coordinates with service providers and partner content providers to allow users to stream video. Naggar ¶ 51. Like claim 1, Naggar discloses a method that uses

device identifiers and activation codes to register a user and deliver multimedia content. *Id.* ¶¶ 51–54. In the following sections, we discuss the steps of Naggar's method that correspond to claim 1's limitations.

1. "receiving a user request for a multimedia content service from a user device over a first application"

Naggar's service-provider network 210 includes content-distribution system 230 for streaming video content ("a multimedia content service"). *Id.* ¶¶ 18, 51. Naggar's user registers a device for use of content-distribution system 230. *Id.* ¶ 53. To begin the registration process, Naggar's service-provider network 201 receives a user's message ("a user request"). *Id.* Because the message is a request for registration that allows the user to receive streaming-video content, the message is a user request for a multimedia-content service, as recited. *See id.* ¶¶ 51–54.

Naggar's message is received from user device 260 over cross-platform application 405 ("over a first application"). *Id.* ¶ 53, Fig. 5. Specifically, Naggar's device-registration client 510—a component within application 405 (*id.* Fig. 5)—sends the message to network 201. *Id.* ¶ 53.

2. "receiving an identifier of the user device"

In the user request, Naggar's service-provider network 201 also receives a client ID ("an identifier of the user device"). *Id.* Specifically, Naggar's client ID is associated and distributed with cross-platform application 405 on user device 260. *Id.*; *see also id,* Fig. 5.

3. *"identifying a service provider of a user"*

Upon receipt of the message, Naggar's service-provider network 210 indicates whether the user is registered at the service-provider network. *Id.* ¶ 53. Because the user registers with service-provider network 210 to use its content-distribution system (230), service-provider network 210 is the user's service provider upon registration. *See id.* That is, by indicating that the user is registered, service-provider network 210 identifies a service provider of the user, as recited. *See id.*

4. *"generating an activation code associating the identifier with the service provider"*

Naggar's service-provider network 210 generates an activation code. *Id.* ¶ 53. The user uses the activation code to register user device 260 with service-provider network 210 ("service provider"). *Id.* ¶ 54. The client ID is associated with application 405 on device 260. *Id.* ¶ 53. Naggar stores the activation code, client ID, and registration token as platform data 590. *Id.* ¶ 54. Because the code is used for registration and is stored in this way, Naggar's activation code is interpreted as "associating the identifier with the service provider," as recited. *See id.* ¶¶ 53–54.

5. *"transmitting the activation code to the first application on the user device"*

Naggar's service-provider network 210 transmits the activation code to device-registration client 510, which is a component within application 405 ("the first application") on device 260 ("on the user device"). *Id.* ¶ 53, Fig. 5.

6. *"receiving the activation code from the user over a second application"*

To enter the activation code, Naggar's user visits an activation URL. *Id.* ¶ 54. The user performs this step using a web browser ("a second application"). *Id.* In this way, Naggar's system receives the activation code from the user over a second application, as recited. *Id.*

7. *"activating the multimedia content service for the user device based on the received activation code"*

Naggar's service-provider network 210 includes content distribution system 230 for streaming video content ("the multimedia content service"). *Id.* ¶¶ 18, 51. Naggar's user registers a device for use of content distribution system 230 ("activating the multimedia content service for the user device"). *Id.* ¶ 53. When registering the user, the system receives the activation code from the user. *Id.* In this way, the activation is based on the received activation code, as recited. *See id.*

8. *"providing content from the multimedia content service to the user device over the first application"*

Naggar's content distribution system 230 provides video content ("providing content from the multimedia content service"). *Id.* ¶¶ 18, 51. Naggar's cross-platform application 405 contains a media-player component 530, which executes on user device 260. *Id.* ¶¶ 44, 50. Media player 530 decodes and plays content that is provided by content-distribution system 230. *Id.* ¶ 57. In this way, Naggar provides content from the multimedia-content service to user

device 260 over cross-platform application 405 ("the first application"). *See id.* ¶¶ 18, 44, 50, 51, and 57.

Therefore, claim 1 is anticipated by Naggar.

Claim 9 recites "A non-transitory computer readable storage medium with an executable program stored thereon, wherein the program instructs a processor to perform actions that include" the steps recited in claim 1. As discussed above, Naggar discloses the steps recited in claim 1, and that those steps are implemented as software on non-transitory medium, as recited. *Id.* ¶¶ 33–34 (disclosing a software implementation of the system's components), ¶ 36 (disclosing storing instructions on a magnetic or optical medium).

Claim 16 recites "A device, comprising: a memory storing a plurality of rules; and a processor coupled to the memory and configured to perform actions that include" the steps recited in claim 1. As discussed above, Naggar discloses the steps recited in claim 1, and a device comprising a memory storing a plurality of rules (*id.* ¶¶ 34, 36 (disclosing memory 330)) and a processor coupled to the memory and configured to perform actions (*id.* ¶¶ 36, 39 (disclosing processing unit 320)).

Therefore, claims 9 and 16 are also anticipated by Naggar.

Although we do not reject every claim pursuant to our discretionary authority under 37 C.F.R. § 41.50(b), this does not preclude the Examiner from determining that these claims are unpatentable. *See* Manual of Patent Examining Procedure § 1213.02 (9th ed. Rev. 07.2015, Nov. 2015).

DECISION

We reverse the Examiner's rejection of claims 1–20.

Pursuant to our discretionary authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection for independent claims 1, 9, and 16 under 35 U.S.C. § 102(a)(1) and 35 U.S.C. § (a)(2) as anticipated by Naggar.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review." Section 41.50(b) also provides:

> When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:
>
> (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.
>
> (2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

Further guidance on responding to a new ground of rejection can be found in the MPEP § 1214.01.

<u>REVERSED</u>
<u>37 C.F.R. § 41.50(b)</u>

		Application/Control No.	Applicant(s)/Patent Under Patent Appeal No.
Notice of References Cited		14/149,367	2017-000449
		Examiner	Art Unit 2423	Page 1 of 1

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
	A	US- 2013/0332838 A1	12-2013	Naggar et al.	
	B	US-			
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

U.S. Patent and Trademark Office

PTO-892 (Rev. 01-2001)   Notice of References Cited   Part of Paper No.